

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re AMERICAN REALTY CAPITAL  
PROPERTIES, INC. LITIGATION

Civil Action No. 1:15-mc-00040-AKH

ECF Case

ORAL ARGUMENT REQUESTED

**MEMORANDUM OF LAW IN SUPPORT  
OF DEFENDANT NICHOLAS S. SCHORSCH'S MOTION  
TO DISMISS THE AMENDED CLASS ACTION COMPLAINT**

PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP  
1285 Avenue of the Americas  
New York, NY 10019-6064  
Tel: (212) 373-3000

*Attorneys for Defendant Nicholas S. Schorsch*

Defendant Nicholas S. Schorsch respectfully submits this Memorandum of Law in support of his motion to dismiss the Amended Class Action Complaint for Violations of the Federal Securities Laws (the “Amended Complaint”). The Amended Complaint should be dismissed for the following reasons.

*First*, the Amended Complaint fails to plead loss causation. *See* Memorandum of Law of Defendant American Realty Capital Properties, Inc., Point I.

*Second*, the Amended Complaint fails to identify facts giving rise to a strong inference that Mr. Schorch acted with scienter. *See id.*, Point II.

*Third*, any allegedly misleading forward-looking statements are protected under the safe harbor provision of the Private Securities Litigation Reform Act of 1995 (the “PSLRA”). *See id.*, Point III.

*Fourth*, the Amended Complaint fails to allege a primary violation or culpable participation by Mr. Schorsch. *See id.*, Point IV.

*Fifth*, plaintiffs have not adequately alleged standing as to their claim under Section 12(a)(2) of the Securities Act of 1933, as to five of the seven offerings of securities identified in the Amended Complaint. *See* Memorandum of Law of Defendants AR Capital LLC, et al. (“AR Capital Mem.”), Point I.A–B.

*Sixth*, the Section 12(a)(2) claim also fails because the Amended Complaint does not adequately allege that Mr. Schorsch was a “statutory seller” who successfully solicited the purchase of the securities at issue. *See id.*, Point I.C.

*Seventh*, the Section 11, Section 12(a)(2), and Section 14(a) claims fail to plead fraud with particularity under the heightened pleading standards of Rule 9(b) of the Federal

Rules of Civil Procedure. *See* Memorandum of Law of Defendants RCS Capital Corp., et al., Point II.A; AR Capital Mem., Point III.B.

Accordingly, Mr. Schorsch joins the following arguments presented in the briefs of various co-defendants in this action: (i) all arguments in the brief of defendant American Realty Capital Properties, Inc.; (ii) the arguments in Points I and III.B of the brief of defendants AR Capital, LLC, ARC Properties Advisors, LLC, Edward M. Weil, Peter M. Budko, Brian D. Jones, William M. Kahane, Scott J. Bowman, David M. Gong, and Nicholas Radesca; and (iii) the arguments in Point II.A of the brief of defendants RCS Capital Corporation, RCAP Holdings, LLC, and Realty Capital Securities, LLC.<sup>1</sup>

Dated: New York, New York  
May 29, 2015

Respectfully submitted,

PAUL, WEISS, RIFKIND,  
WHARTON & GARRISON LLP

By: /s/ Daniel J. Kramer

Daniel J. Kramer  
Theodore V. Wells Jr.  
Lorin L. Reisner  
Audra J. Soloway  
Justin D. Lerer  
Joshua D. Kaye

1285 Avenue of the Americas  
New York, NY 10019-6064  
Telephone: (212) 373-3000  
dkramer@paulweiss.com

*Attorneys for Defendant Nicholas S. Schorsch*

---

<sup>1</sup> Mr. Schorsch does not accept or adopt any of the factual characterizations, statements or descriptions set forth in the Amended Complaint or contained in the briefs of any of the defendants.